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March 30, 2006

**DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Case Name: Personnel Security Hearing

Date of Filing: October 20, 2005

Case Number: TSO-0298

This Decision concerns the eligibility of XXXXXX XXXXXX XXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup> A Department of Energy (DOE) Operations Office suspended the individual's request for an access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should be restored.

**I. Background**

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

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<sup>1/</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

In this instance, the individual was granted a security clearance from DOE after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on August 17, 2005, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsection h. More specifically, the Notification Letter alleges that the individual has “[a]n illness or mental condition which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h) (Criterion H). The bases for this finding are summarized below.

The Notification Letter states that the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who diagnosed the individual with Pathological Gambling, in remission, and Major Depressive Disorder, in partial remission. According to the DOE Psychiatrist’s report, the coexistence of these mental conditions causes or may cause a significant defect in the individual’s judgment or reliability. The DOE Psychiatrist further determined that the individual did not present adequate evidence of rehabilitation or reformation. In addition, the Notification Letter states that the individual has admitted to having a gambling problem, and that his gambling was the cause of his bankruptcy and separation from his wife.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on October 20, 2005, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On October 25, 2005, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, the DOE Counsel called the DOE Psychiatrist as the sole witness on behalf of DOE Security. Apart from testifying on his own behalf, the individual called his wife, his Gamblers Anonymous associate, his counselor and his supervisor. The transcript taken at the hearing will be hereinafter cited as "Tr.". Documents submitted by the DOE Counsel and the individual during this proceeding constitute exhibits to the hearing transcript and will be cited as "DOE Exh." and "Ind. Exh." respectively.

### Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual has been employed by a DOE contractor for 27 years, and was granted a security clearance shortly after being hired. With the exception of two minor security infractions, in 1991 and 2001, the individual maintained his security without incident. However, in November 2004, DOE Security was informed by the individual that he had filed a petition for Chapter 13 bankruptcy. The individual was therefore summoned by DOE Security for a Personnel Security Interview (PSI), conducted on February 8, 2005, to address the potential security concerns arising from this information. Some of these concerns were unresolved by the PSI, and the individual was therefore referred to the DOE Psychiatrist. Below is a summary of the circumstances which precipitated the individual filing for bankruptcy, as revealed by the individual during his PSI and psychiatric interview.

The individual was first married in 1971. In 1997, after nearly 26 years of marriage, the individual and his wife became estranged and decided to divorce. As a result, the individual began to experience symptoms of depression, including anxiety, low self-esteem, remorse, compulsive eating and sleeplessness at night. In an effort to alleviate these symptoms, the individual turned to gambling as a recreational outlet. Up until that time, the individual had gone to casinos with his wife only four times over their 26 years of marriage, and gambled very little. However, the individual found that gambling helped to relieve the stress of his divorce and he began taking trips out of town to casinos on a monthly basis. By 1999, the individual was traveling out of town twice a month to gamble. The individual would typically spend \$500-\$600 on each occasion, primarily playing slot machines. The individual often used ATM withdrawals charged to credit cards to finance his gambling excursions.

In late 1998, the individual met his second and present wife. They dated during 1999 and were married in March 2000. After his marriage, the individual curtailed his gambling trips to three times a year. However, the individual redirected his urge to gamble to buying lottery scratch-off tickets. The individual's purchase of scratch-off tickets escalated steadily from 2000 through 2003. During 2003, the individual estimates that he typically spent \$300-\$400 out of each bi-weekly paycheck and, at the height, as much as \$100 per day for lottery scratch-off tickets. The individual is typically an introverted person, but became more outgoing and relished the attention he received from his friends and co-workers when he won. However, the individual did not reveal the large amounts of money he was losing. Again, the individual generally used ATM withdrawals charged to credit cards to finance his gambling habit.

The individual and his wife kept their finances separately, and he was therefore able to hide the extent of his gambling losses from her. Sometimes the individual would make an ATM withdrawal and give his wife money pretending he had won when actually he had lost. However, in late 2003, his wife began to notice the large number of scratch-off tickets and the growing pile of credit card bills coming to the house for the individual. The individual indicated to his wife that he had everything under

control, but she was not convinced and decided to run a credit report on the individual in early 2004. She was astonished and angry when the credit report showed that the individual had a long list of credit card accounts and a total indebtedness of nearly \$100,000. She confronted the individual in January 2004, and strongly urged the individual to reveal his situation to his family to garner their support, and to seek professional help. The individual willingly followed his wife's direction and, after informing his family, sought to join a chapter of Gamblers Anonymous (GA). However, the individual could not find a functioning chapter of GA in his vicinity. The individual's wife therefore made inquiries and ultimately was able to find a counselor (Counselor) who specializes in gambling addiction. The individual began seeing the Counselor in March 2004 and has continued to see her twice a month. The Counselor was able to connect the individual with two other clients and together they formed their own chapter of GA in April 2004. The individual has not gambled since that time. While others have dropped in and out, the individual and a close associate have maintained the GA chapter and have not failed to meet on a weekly basis.

The revelation of the extent of the individual's gambling debt placed a strain on the individual's marriage, and the individual and his wife separated for one month in the spring of 2004. Upon reconciling, they began to explore ways to manage and pay off the individual's credit card debts, including refinancing and debt consolidation. However, in the fall of 2004, it became clear to them that they could not keep up with the monthly payments and they decided that filing for bankruptcy was their most viable option. Upon consulting with an attorney, the individual insisted on filing for Chapter 13 bankruptcy, requiring him to pay back a portion of the debt, rather filing for a Chapter 7 bankruptcy which would have absolved all of the debt. The bankruptcy petition, filed in November 2004 and finalized in December 2004, showed that the individual had unsecured credit card debts spread out over twelve credit cards amounting to \$93,535. Under the approved agreement, the individual is required to pay back approximately one-third of this amount, in monthly installments of \$898 per month over a three-year period. The individual has remained current on these payments.

Pursuant to the PSI, the individual was referred to the DOE Psychiatrist who examined the individual's personnel security file and treatment records, and conducted a psychiatric evaluation of the individual on May 27, 2005. In her report dated June 9, 2005, the DOE Psychiatrist made a dual diagnosis of the individual: (1) Pathological Gambling, in remission, and (2) Major Depressive Disorder (with anxious features), single episode, in partial remission. These diagnoses by the DOE Psychiatrist are based upon diagnostic criteria set forth in *The Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR)*. According to the DOE Psychiatrist's report, her diagnoses must be addressed as a dual disorder since, in her professional opinion, the individual's gambling was caused by chronic issues of low self-esteem coupled with unresolved emotional distress stemming from his divorce.

She further states that Pathological Gambling is a mental condition that causes, or may cause, a significant defect in judgment or reliability, and that there is a significant probability of relapse until the individual completely addresses his underlying depression. As sufficient evidence of reformation or rehabilitation, the DOE Psychiatrist states in her report that, at a minimum, the individual must continue in therapy with his Counselor, in addition to GA attendance, until such time as the Counselor is comfortable that the individual has attained sufficient skills to cope with the stressors of life without resorting to addictive behaviors.

## II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should be restored since I conclude that such restoration would not endanger the common defense and security and would be clearly consistent with

the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criterion H: Pathological Gambling, Major Depressive Disorder

The individual has been diagnosed with Pathological Gambling and an interrelated Major Depressive Disorder by the DOE Psychiatrist. *See* DOE Exh. 9 at 9-13. I find these diagnoses are amply supported by the record of this case and the individual's admitted history of compulsive gambling leading to his bankruptcy. At the hearing, the individual agreed with the opinion of the DOE Psychiatrist, stating that he found her report "very accurate." Tr. at 82. The individual's Counselor<sup>2/</sup> also concurred with the dual diagnosis of the DOE Psychiatrist. According to the Counselor, the individual was "very addicted [and] depressed" when she first starting treating him in March 2004. Tr. at 87; *see also* DOE Exh. 10 (Counselor's report) at 1. The Counselor similarly believes that it is "very hard to separate" the individual's gambling from his depression, noting that "my first diagnosis was the major depression . . . I believe the depression came before the compulsive gambling." Tr. at 99.

I therefore find that DOE Security properly invoked Criterion H in suspending the individual's security clearance. As observed by Hearing Officers in similar cases, a diagnosis of Pathological Gambling raises serious security concerns. "Emotional, mental, and personality disorders can cause a significant defect in an individual's psychological, social and occupational functioning. These disorders are of a security concern because they may indicate a defect in judgment, reliability, or stability. An individual who is financially overextended is at a risk of having to engage in illegal acts to generate funds. Financial problems that are linked to gambling are of particular concern." *Personnel Security Hearing*, Case No. VSO-0224, 29 DOE ¶ 82,860 at 86,035 (2005); *see also Personnel Security Hearing*, Case No. VSO-0475, 28 DOE ¶ 82,832 (2001); *Personnel Security Hearing*, Case No. TSO-0014, 28 DOE ¶ 82,945 (2003). In addition, an individual's attempt to conceal his gambling may render the individual susceptible to blackmail or coercion. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.*

Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to overcome the concerns of DOE Security. For the reasons described below, I have determined that the individual's security clearance should be restored.

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<sup>2/</sup> The individual's Counselor is not a psychiatrist, but a Licensed Professional Counselor with specialized training in treating compulsive gambling addiction. The Counselor was certified as a compulsive gambling counselor in 1993, and has had substantial experience in treating individuals with that addiction since that time. Tr. at 85-86.

## B. Mitigating Evidence

Since his wife confronted him in early 2004, the individual has been proactive in seeking treatment for his gambling addiction. After failing to find a GA chapter within his vicinity, the individual established his own chapter in April 2004 with the help of another gambling addict, who was introduced to the individual by the Counselor and has become the individual's close friend and GA associate. Tr. at 71. Although other addicts have joined and left the group, the individual and his GA associate have not failed to meet every week since the individual stopped gambling on April 18, 2004. *Id.* Thus, the individual had achieved 21 months of abstinence from gambling at the time of the hearing. The individual's GA associate testified at the hearing and corroborated the individual's testimony that together they have continued to work the GA 12-step program and have not failed to meet, if only for coffee, every week since April 2004. Tr. at 39-41. At the same time, the individual has continued meeting with the Counselor twice monthly since March 2004. The Counselor lauded the dedication of the individual and his GA associate, calling their achievement "very remarkable" and adding: "I'm very impressed with them, and in turn grateful to them in my work with compulsive gamblers." Tr. at 90-91.<sup>3/</sup>

I was also very impressed with the individual's candor in discussing his gambling addiction at the hearing. The individual was forthright in admitting that he is a compulsive gambler and that he will always have the desire to gamble, but appeared in earnest when expressing his lifetime commitment to never gamble again. Tr. at 77-78. In addition to GA and his Counselor, the individual has strong family support systems in place and the individual has also become active in his church. Tr. at 23, 53; Ind. Exh. 1 (statement of individual's son). In the opinion of his Counselor, the individual is "working a good program" and the probability of the individual relapsing into gambling is "low." Tr. at 97.

In her report, the DOE Psychiatrist acknowledged that the individual had made impressive strides in confronting his pathological gambling, which she considers to be in remission, yet she continued to be concerned that the individual's depressive disorder, the root cause of his gambling, had not been adequately addressed. Her report states, in part: "The major depressive disorder itself was not of the nature that causes significant impairment in judgment and reliability . . . However, if the depression is not completely addressed or resolved and if in fact [the individual] used gambling as an escape from unpleasant feelings, the probability of relapse is still significant at the present time." DOE Exh. 9 at 13. I find, however, that the lingering

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<sup>3/</sup> The individual's wife testified that he was "very passionate" about getting the GA chapter started, stating that "It's very important to him. He knows he'll be going the rest of his life." Tr. at 21.

concerns of the DOE Psychiatrist have been alleviated by the report and testimony of the Counselor.

The Counselor testified that when she began treating the individual in March 2004, he openly acknowledged his gambling addiction but was in denial about his depression. Tr. at 88-89. According to her report, the individual “was having difficulty sleeping, eating and concentrating [and was] overwhelmed with a sense of helplessness and guilt.” DOE Exh. 10 at 2. According to the Counselor, she has employed cognitive therapy during her bi-monthly sessions which is designed to induce a self-examination by the individual of his life experiences and vulnerabilities. She testified that the individual has made “steady, steady progress.” Tr. at 94. She states in her report that “[a]s this therapy has progressed [the individual] has become aware of the long held core belief that he is inadequate and must achieve to compensate. He has gained insight into the ways his irrational beliefs have burdened his life losses with an exaggerated sense of guilt and that he has sought relief from this with gambling.” DOE Exh. 10 at 3. The Counselor gave the individual a good prognosis with regard to his depression if he maintains his current recovery program. *Id.*

During his testimony, the individual stated his understanding that it was his depression over his divorce that led him into excessive gambling. Tr. at 70. The individual testified that his Counselor has spent as much time counseling him about his depression as his gambling compulsion, and he feels much better now. *Id.* The individual stated convincingly that he is over the remorse occasioned by his divorce, as well as the guilt and shame he felt when his gambling addiction was brought out into the open. Tr. at 81. The individual’s wife, GA associate and supervisor all agreed that the individual now feels much more positive about himself, based upon his demonstrated attitude and statements he has made. Tr. at 21, 41, 54.

After reviewing the Counselor’s report and listening to the hearing testimony, the DOE Psychiatrist concluded: “[the individual] is very committed to his recovery. I agree with everything that [his Counselor] seemed to have assessed.” Tr. at 107. The DOE Psychiatrist changed her diagnosis of the individual’s depression to “in full remission” and concurred with the Counselor that there is now a low probability that the individual will relapse into gambling. Tr. at 109. It was clear from the DOE Psychiatrist’s final testimony that her reservations about the individual’s depression have now been adequately addressed, and absent this complication she believes the individual has “a very good prognosis” for overcoming his gambling addiction. Tr. at 106-07. Accordingly, I find that the individual has adequately mitigated the security concerns associated with his dual diagnosis of Pathological Gambling and Major Depressive Disorder.

### III. Conclusion

I find that DOE Security properly invoked 10 C.F.R. § 710.8(h) in suspending the individual's access authorization. However, for the reasons set forth in this Decision, I have determined that the individual has adequately mitigated the associated security concerns. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's security clearance should be restored. The Manager of the DOE Operations Office or the Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown  
Hearing Officer  
Office of Hearings and Appeals

Date: March 30, 2006